

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Sacramento, California

**August 24, 2023 at 10:00 a.m.**

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**FINAL RULINGS**

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| 1. <a href="#"><u>23-21407</u></a> -E-11<br><a href="#"><u>TRF</u></a> -1 | BELLA VIEW CAPITAL, LLC<br>Peter Macaluso | MOTION FOR RELIEF FROM<br>AUTOMATIC STAY<br>7-19-23 [ <a href="#"><u>61</u></a> ] |
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CENTER STREET LENDING VIII  
SPE, LLC VS.

**Final Ruling:** No appearance at the August 24, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p><b>Pursuant to court order, Dckt. 107, the hearing on the Motion for Relief from the Automatic Stay was continued to September 21, 2023 at 10:00 a.m.</b></p>
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CENTER STREET LENDING VIII  
SPE, LLC VS.

**Final Ruling:** No appearance at the August 24, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2023. By the court’s calculation, 32 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Relief from the Automatic Stay is continued to September 21, 2023 at 10:00 a.m.**

Movant Center Street Lending VIII SPE, LLC (“Movant”) seeks relief from the automatic stay with respect to Bella View Capital, LLC’s (“Debtor”) real property commonly known as 1396 Summit Rd., Berkeley, California (“Property”). Movant has provided the Declaration of Michael Marshall to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues the loan matured on December 29, 2022 and has failed to make payments. Declaration, Dckt. 73.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 10, 2023. Dckt. 87. Debtor states:

1. Movant conducted a Trustee’s Deed Upon Sale which was in violation of the automatic stay.

2. There is no cause for relief since the Property has equity.
3. The Motion is procedurally deficient because it does not ask to annul the stay.
4. The post-petition foreclosure sale is void.

### **REQUEST FOR CONTINUANCE**

On August 11, 2023, Debtor filed a request for continuance, as Debtor's Counsel is out of town and unavailable to attend the hearing. The court construes the document to be an *Ex Parte Motion* (as required by Fed. R. Bankr. P. 9013) to continue the hearing. This continuance is consistent with one agreed to between Debtor and Movant for another Motion for Relief From the Stay (TRF-1) in this case.

Upon consideration of the *Ex Parte Motion*, the court continues the hearing on the Motion for Relief to September 21, 2023 at 10:00 a.m.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Center Street Lending VIII SPE, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion for Relief is continued to **September 21, 2023 at 10:00 a.m.**

FIRST TECHNOLOGY FEDERAL  
CREDIT UNION VS.

**Final Ruling:** No appearance at the August 24, 2023 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 7, 2023. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion for Relief from the Automatic Stay is granted.</b></p>
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First Technology Federal Credit Union (“Movant”) seeks relief from the automatic stay with respect to an asset identified as a 2019 Dodge Charger, VIN ending in 4172 (“Vehicle”). The moving party has provided the Declaration of Jamie Kekaulua to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Felix Eduardo Brambila Santana (“Debtor”).

Movant argues Debtor has not made three pre-petition payments, with a total of \$2,460.86 in pre-petition payments past due. Declaration, Dckt. 19. Additionally, Movant notes that Debtor intends to surrender the Vehicle in full satisfaction of Movant’s claim. This is evidenced by Debtor’s Statement of Intention. Dckt. 1 at 39.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

## TRUSTEE'S NONOPPOSITION

The Trustee filed a statement of nonopposition on July 25, 2023.

### DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$43,926.54 (Declaration, Dckt. 19), while the value of the Vehicle is determined to be \$39,075.00, as stated in the NADA Valuation Report.

#### 11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

#### 11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

#### Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by First Technology Federal Credit Union (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Dodge Charger, VIN ending in 4172 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.